

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

IN RE:

Dorothy Marie Byrd

Debtor

Case No. 18-11852-ta7

**MOTION FOR RELIEF FROM STAY AND TO ABANDON PROPERTY
LOCATED AT 10516 TOWNER AVE NE, ALBUQUERQUE, NM 87112**

Wells Fargo Bank, N.A., as successor by merger to Wells Fargo Financial Bank, its assignees and/or successors (“Creditor”), by and through its undersigned counsel, moves the Court for an order for relief from the automatic stay pursuant to 11 U.S.C. §362 of the Bankruptcy Code to allow Creditor, its successor and/or assigns to proceed with foreclosure of the real property on which Creditor holds a Note, to exercise its remedies under its Note and Mortgage, and pursuant to 11 U.S.C. §554(b), for an order that the property is no longer property of the estate.

As grounds for its Motion, Creditor states:

1. On July 26, 2018, Debtor filed a Chapter 7 Bankruptcy.
2. Debtor is the owner(s) of certain real property located at 10516 Towner Ave NE, Albuquerque, NM 87112 (“Property”) and legally described as set forth in **Exhibit “A”**, which is a copy of the recorded Mortgage.
3. Creditor is the holder of a Line of Credit Agreement dated April 28, 2008, in the principal amount of \$20,000.00, which is secured by the Mortgage of the same date. See attached **Exhibit “B”**, which is a copy of the Debt Agreement.

4. The Mortgage was duly recorded and perfected in accordance with New Mexico law on April 29, 2008, as Instrument No. 2008047787 in Bernalillo County, New Mexico.

5. The Debtor entered into a Loan Modification Agreement on or around April 16, 2018 for the principal amount of \$15,440.22 (the “Loan Modification Agreement”). See **Exhibit “C”**.

6. The entity has the right to enforce the Note and foreclose in the name of: Wells Fargo Bank, N.A..

7. Debtors executed a Creditor’s home equity line of credit agreement (the “Debt Agreement”) and agreed to be bound by its terms. The Debt Agreement is secured by a mortgage or deed of trust. Creditor is the original mortgagee/successor or beneficiary of the mortgage or deed of trust.

8. Creditor is entitled to relief from stay, as Debtor has insufficient equity in the Property and the Property is not needed for an effective reorganization.

9. As of September 10, 2018, the total approximate amount owed is \$15,470.43¹, itemized as follows:

Unpaid Principal Balance:	\$	15,384.26
Accrued Interest as of 9/10/2018:	\$	61.17
Annual Rate of Interest:		1.1250%
Escrow Advances as of 9/10/2018:	\$	0.00
Pro Rata MIP/PMI as of 9/10/2018:	\$	0.00
Late Charges:	\$	25.00
Total Amount Due to Secured Creditor:	\$	15,470.43

¹ This is an approximation of the lien, including principal balance plus accrued interest, late charges, escrow shortages and other fees and costs, as allowed under the terms of the Mortgage. This estimate is accurate as of the date provided to counsel for the Creditor and is intended only for the purposes of this Motion. This amount cannot be relied upon for any other purposes, including payoff of the secured debt.

DELINQUENCIES:

Monthly Payments:	3	at	\$50.55	\$	151.65
(6/28/18 through 8/28/18)					

Total Delinquencies:	\$	151.65
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10. The current value of the Property is \$160,000.00 based Debtor's own value set forth in Debtor's Schedule A.

11. Other than Movant's Mortgage, the subject Property is also encumbered by a second lien in favor of Mr. Cooper in the approximate amount of \$144,316.00 as set forth in Debtor's Schedule D.

12. Debtor is surrendering the subject Property pursuant to Debtor's Statement of Intentions.

13. Upon information and belief, the Property is of inconsequential value and benefit to the bankruptcy estate.

14. Creditor is entitled to its reasonable attorney's fees and costs in connection with the preparation and filing of this Motion for Relief from Stay pursuant to the terms of the Note and Mortgage, but only as permitted by Bankruptcy Code.

15. Concurrence of the Debtor to the Motion was sought on the September 10, 2018.

WHEREFORE, Wells Fargo Bank, N.A., as successor by merger to Wells Fargo Financial Bank, its assignees and/or successors asks the Court to enter an Order granting it relief from the automatic stay provided by Section 362 of the Bankruptcy Code for the purpose of allowing it to commence or complete foreclosure upon the Property, and for such other relief as the Court deems just and proper.

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The Movant specifically requests permission from this Honorable Court to communicate with the Debtor and Debtor's counsel to the extent of necessary to comply with applicable nonbankruptcy law, and for an order abandoning the subject property, and requests that retain its effect and validity should this case be converted to another chapter of the Bankruptcy Code.

McCarthy & Holthus, LLP

By: /s/ Daniel Grunow

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